

EXHIBIT DD

[PUBLIC VERSION]

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C O N F I D E N T I A L

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

No. 1:22-cv-00125-SW

DEPOSITION OF CAITLIN LONG

November 29, 2023

CUSTODIA BANK, INC.,

Plaintiff,

vs.

FEDERAL RESERVE BOARD OF GOVERNORS and FEDERAL
RESERVE BANK OF KANSAS CITY,

Defendants.

APPEARANCES:

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Appearing on behalf of Defendant.

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1 A No.

2 Q And taking this forward to the fall of 2022,
3 the time of the membership exam that we discussed
4 earlier, had that been built out?

5 A No.

6 Q And had the pooled -- had the pooled account
7 generally been built out at that time?

8 A No.

9 Q There's a reference here to physical
10 storage; is that storage of hardware?

11 A Yes.

12 Q And we discussed already No. 3, the omnibus
13 account. The No. 4, segregated on-chain account, was
14 non-fungible bailment?

15 A Yes.

16 Q And what is that?

17 A That's what we're offering today.

18 Q That's what you're offering today. Okay.
19 As part of the custody services that you planned to
20 provide as part of this business plan, I'm correct
21 that Custodia's plan was to have crypto on balance
22 sheet, correct?

23 A No.

24 Q Custodia would have -- it's your testimony
25 that Custodia's plan was to have zero crypto on

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1 balance sheet as part of its custody service?

2 A Our proposal to the fed, which was not
3 mentioned in this business plan, was to hold up to
4 \$10,000 on balance sheet to facilitate customer fees,
5 but we abandoned that.

6 Q To facilitate customer fees in connection
7 with the custody service or a different service?

8 A To facilitate, yes. Every time you transact
9 on blockchain, fees have to be paid in the token. So
10 in our case for custody, either bitcoin or Ethereum.
11 The question was, who pays the fee. We asked the fed
12 for permission to hold up to \$10,000 on our balance
13 sheet because we will always charge the fee through
14 to the customer.

15 The challenge becomes, you estimate a fee,
16 but you don't know exactly what the fee is going to
17 be when the transaction is confirmed on the
18 blockchain, and so there will be differences that
19 will be very small, but we did not want to have to go
20 back to a customer to ask for additional bitcoin to
21 pay for the fee because these are small differences.

22 And so we asked for permission from the fed
23 to hold a de minimis amount, and every time the fed
24 has talked about us holding digital assets on balance
25 sheets, it has made that material omission that our

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1 request -- first of all, that we requested it. It
2 was not in our business plan, and second of all, that
3 it was only \$10,000.

4 Q So -- but your proposal to the fed was that
5 you would have the small amount of crypto digital
6 assets on balance sheet, correct?

7 A We proposed that in -- as part of the -- I
8 believe it was the second request for additional
9 information that the Board of Governors sent us in
10 summer 2022 related to the membership exam. That's
11 when it came up. It was not in this business plan.

12 Q So let's break that down. So at the time of
13 this business plan then, you're saying this business
14 plan as of August of 2021 did not contemplate any
15 crypto on balance sheet at all?

16 A Correct.

17 Q Now, in 2022, just to pinpoint a place in
18 time, the time of the membership exam in September of
19 2022, you were proposing to put a small amount of
20 digital assets on balance sheet, correct?

21 A Up to \$10,000, yes.

22 Q It was your understanding that the
23 membership exam that occurred at that time was going
24 to be used within the federal reserve system, broadly
25 speaking, to inform both the master account request

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1 decision and the membership application decision,
2 correct?

3 A That's what they told us.

4 Q So at that time, you were proposing to put a
5 small amount of digital assets on balance sheet?

6 A We asked for permission to do so.

7 Q And what was their response to that?

8 A The response was the January 27th 86-page
9 order that made it sound like we were going to hold
10 digital assets as principle, which was absolutely not
11 true.

12 Q You're saying prior to January 27th, 2023,
13 you didn't get any notification from the federal
14 reserve that holding digital assets on balance sheet
15 was a bad idea?

16 A The de minimis digital assets, we repeatedly
17 requested an answer to that question, which we had
18 sought permission to do, and we did not receive an
19 answer until the 86-page order on January 27th.

20 Q Isn't it true that the federal reserve
21 suggested to you in the fall of 2022 that you come up
22 with a solution for those fees that would not involve
23 holding digital assets on balance sheet?

24 A They asked us in that second -- I believe it
25 was the second. There were three requests for

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1 additional information in writing, and they asked us
2 for alternative proposals, and we did provide
3 additional proposals.

4 Q The alternative proposals that you provided
5 included proposals that resulted in zero digital
6 assets on balance sheet?

7 A Yes.

8 Q When did you provide those proposals?

9 A It would have been around August 2022. We
10 had conversations at that time with our primary
11 regulator, the Wyoming Division of Banking.

12 They initially took the position that we
13 were required to have funds on hand to facilitate
14 digital asset transactions, and so we would have had
15 to make up the difference. That is the reason for
16 the request. It was the Wyoming Division of Banking
17 asking us to ask the fed for permission to do this.

18 The Wyoming Division of Banking subsequently
19 decided that that was not required, and therefore, we
20 abandoned it.

21 The other issue that was happening -- can I
22 finish?

23 Q Yeah.

24 A The other issue that was happening at the
25 time, is that we learned Bank of New York Mellon was

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1 Custodia could transfer them to third customers who
2 are not customers of Custodia, correct?

3 A Yes.

4 Q And the customer holding Avits could redeem
5 the Avits from Custodia for dollar for dollar?

6 A Yes.

7 Q Could a noncustomer of Custodia redeem Avits
8 from Custodia?

9 A Yes. That was proposed because Avits are
10 structured as digital cashier's checks, and just like
11 a cashier's check is a negotiable instrument if it's
12 in paper form. All Avits are are a digital form of
13 cashier's checks. So we followed the exact same law.

14 Q So when you say, "yes, that was proposed,"
15 do you mean, yes, Custodia could redeem Avits to
16 noncustomers?

17 A Yes. That is required under UCC to maintain
18 negotiability.

19 Q Was there a plan to conduct KYC, BSA/AML
20 checks on noncustomers who approached Custodia to
21 redeem an Avit?

22 A Yes, exactly the same as is required of
23 paper cashier's checks redeemed to any bank by a
24 noncustomer.

25 Q So you mentioned earlier that there are many

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1 Q Is it your understanding that today BNY
2 Mellon is providing only de minimis digital asset
3 custody service?

4 A I don't know how much they're providing.

5 Q You don't know?

6 A No.

7 Q You don't know that they've publicly
8 announced that they're providing de minimis digital
9 asset custody service because of the impact of SAB
10 121?

11 A I didn't know that. I don't know what de
12 minimis means for Bank of New York Mellon. They have
13 literally trillions under management, so de minimis
14 to them might mean hundreds of millions. I don't
15 know.

16 Q You'd agree, though, that if a bank needed
17 to hold -- if a bank needed to account for digital
18 asset held in custody on balance sheet, that it would
19 have a dramatic impact on their capital requirements,
20 right?

21 A Yes.

22 Q You understand that that accounting
23 treatment -- strike that. You understand that the
24 accounting treatment set forth in SAB 121 would make
25 it uneconomic for banks to provide digital asset

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1 know of any digital asset focused de novo
2 institutions that requested a master account between
3 2018 and 2020?

4 A I knew that there were applicants to the
5 FDIC. I knew that there were applicants to the OCC
6 that had also requested master accounts -- OCC trust
7 banks, and I knew about Kraken, plus the other
8 Wyoming speedies, yeah.

9 Q There was no other Wyoming speedy that
10 requested a master account?

11 A Kraken did it around the same time we did.
12 I don't know the precise date.

13 Q Right. I mean, aside from Custodia and
14 Kraken in 2020?

15 A At that time, yes. The other two were not
16 chartered until later, but they did show up in the
17 master account database as having applied for master
18 accounts, yes.

19 Q Katie Cox writes in Point 4, "The company
20 also has developed policies and procedures in order
21 to operate in a safe and sound manner, as well as
22 comply with all BSA/AML requirements"; do you see
23 that?

24 A Yes.

25 Q At that time, were your BSA/AML policies and

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1 procedures complete and final?

2 A We had -- yes. The board had approved them.
3 I don't recall the specific date, but I believe it
4 was in the summer of 2020, the first versions yes.

5 Q You say, "first versions," but were they
6 sufficiently advanced that you could launch with
7 them?

8 A Yes. They were standard BSA/AML policies.
9 We did significant revisions to them subsequently,
10 but yes, what we did was we bought a package of
11 standard policies, and we adopted them before the
12 board adopted that first slew of policies in the
13 summer of 2020, and then we've continued to revise
14 them ever since.

15 Q And in Point No. 8, Katie Cox writes that
16 "It will be difficult for the fed to deny its
17 application of a master account with the federal
18 reserve. I'm not saying that a denial of the
19 application can't happen because the fed is always
20 concerned about unintended consequences of any action
21 that it takes is a very cautious organization." She
22 continues, "What I am saying is based on my 30-year
23 experience with the federal reserve system, I believe
24 that the fed will approve Avanti's application."

25 So my question for you is whether Katie Cox

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1 Q And was the only issue they raised this
2 issue of automation?

3 A That was actually the big one. It drove a
4 lot of the conclusions.

5 Q Well, let's go back to Exhibit 258, your
6 notes. The notes in the left refer to a meeting with
7 Ross and Jennifer on September 16th, 2022; do you see
8 that?

9 A Yes.

10 Q And they're focused on BSA risk
11 assessment?

12 A Yep.

13 Q And Ross and Jennifer are both Kansas City
14 employees, correct?

15 A Correct.

16 Q On the right-hand side of the page, there's
17 a reference to notes of a meeting with Ross and
18 Jennifer on September 23, 2022; you see that?

19 A Yes, yep.

20 Q And the first notation is, "Lots more
21 documenting formalization of processes;" do you see
22 that?

23 A Correct.

24 Q Interpret these notes for me. Is this what
25 they're telling you?

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1 A Yes. These are things they're telling us,
2 correct.

3 Q So they're telling you that Custodia needs
4 lots more documenting and formalization of
5 processes?

6 A Yep.

7 Q And that is needed in the IT area?

8 A Yes. There's an important context for that.
9 Ross had the cutoff date at June 30th, and we sent
10 all the documentation for IT in August and September,
11 and he did not review that as part of the exam.

12 Our agreement was that he would review those
13 documents in the follow-up exam that we acknowledged
14 by this point we were going to need.

15 Q So you would -- by this point, by September
16 23rd, 2022, you acknowledged to the Kansas City team
17 that you would need a follow-up exam?

18 A We all understood that that was the case,
19 yes.

20 Q What do you mean by, "we all understood that
21 was the case"?

22 A Both the exam team, Ross and Jennifer, in
23 the feedback and the one-on-one conversations I had
24 with Ross, also Katie Cox, as well. She had told us
25 especially when they determined that we were going to

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1 be held to a complex bank standard, we were not going
2 to make it on the first exam, and so the fact that we
3 sent all that documentation, which did exist by
4 September 23rd after the cut-off date of June 30th,
5 Ross didn't consider any of it.

6 Q So it's your testimony that in Ross' exam,
7 he did not consider information about IT policies
8 that you provided to him after June 30th?

9 A Correct. The letter says that.

10 Q And BSA -- he also indicates that BSA
11 required lots more documentation and formalization of
12 processes; is that right?

13 A Correct, and those were Crowe
14 recommendations we were working on, yes.

15 Q You hadn't completed as of September 23,
16 2022, correct?

17 A Correct.

18 Q He also indicated that Custodia needs to do
19 lots more documenting and formalization of processes
20 concerning project management?

21 A Yes.

22 Q And there's a notation here, "Big question
23 is how responses to Crowe remediation will be
24 evaluated"?

25 A Yes.